

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

WINTON TRANSPORTATION, Inc.,	:	Case No. 1:05CV471
	:	
Plaintiff	:	District Judge Susan J. Dlott
	:	
v.	:	ORDER CONSOLIDATING
	:	CASE NOS. 1:05CV471 AND
PAT SOUTH, in her official capacity as	:	1:06CV646; VACATING THE
WARREN COUNTY	:	COURT'S SEPTEMBER 5, 2006
COMMISSIONER, et al.	:	NOTATIONAL ORDER
	:	DENYING PLAINTIFF'S
Defendant.	:	MOTION FOR LEAVE TO FILE
	:	AN AMENDED COMPLAINT;
	:	ORDERING PLAINTIFF TO
	:	FILE A CONSOLIDATED
	:	COMPLAINT; and DENYING
	:	WITHOUT PREJUDICE
	:	PLAINTIFF'S MOTION FOR
	:	SUMMARY JUDGMENT AND
	:	DEFENDANTS' CROSS-
	:	MOTION FOR SUMMARY
	:	JUDGMENT
	:	

On July 14, 2005, Plaintiff Winton Transportation, Inc. brought suit (hereinafter referred to as "*Winton I*") against Defendants Pat South, C. Michael Kilburn, and David G. Young, all in their official capacities as Warren County Commissioners. Plaintiff asserts the following claims: (1) violation of its right to procedural due process, pursuant to 42 U.S.C. § 1983; (2) abuse of discretion; and (3) violation of Ohio Rev. Code § 307.90. Both Plaintiff and Defendants filed motions for summary judgment. (Docs. 16, 23.) Subsequent to the ripening of these motions and

the completion of discovery, Plaintiff moved the Court for leave to amend its complaint. (Doc. 51.) With its proposed Amended Complaint, Plaintiff sought to add Warren County Grants Coordinator Jerry Haddix in his individual capacity and to assert a new claim against the Defendant Commissioners for violation of its First Amendment rights. Due to Plaintiff's delay in seeking leave to amend and because both parties had already moved for summary judgment as to the original complaint, the Court denied Plaintiff's Motion for Leave to File an Amended Complaint on September 5, 2006. (Doc. 59.)

Shortly thereafter, Plaintiff filed a new lawsuit (hereinafter referred to as "*Winton II*" with this court, asserting essentially the same claims as it raised in its proposed amended complaint. (Case No. 1:06CV646, doc. 1.) On October 13, 2006, the Court held a conference to discuss the status of the two cases. During this conference, Plaintiff's counsel assured the Court that the claims raised in *Winton II* were independent and did not overlap with the claims raised in *Winton I*. However, after reviewing the complaints in both cases and the parties' motions for summary judgment in *Winton I*, the Court finds that common questions of law and fact predominate in these two actions.

Accordingly, the Court **CONSOLIDATES** *Winton I*, No. 1:05CV471, and *Winton II*, No. 1:06CV646, pursuant to Fed. R. Civ. P. 42(a).¹ The Court additionally **VACATES** its September 5, 2006 Order Denying Plaintiff's Motion for Leave to File an Amended Complaint (doc. 59) and **ORDERS** Plaintiff to file a consolidated complaint. Finally, the Court **DENIES**

¹ Fed. R. Civ. P. 42(a) states, "When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

WITHOUT PREJUDICE Plaintiff's Motion for Summary Judgment (doc. 16) and Defendants' Cross-Motion for Summary Judgment (doc. 23).

s/Susan J. Dlott
Susan J. Dlott
United States District Judge